

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6068

PETITION OF STEVAN LIEBERMAN
(Hearing held May 4, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, June 23, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(b)(3). The existing accessory structure (detached carport) requires a variance of ten (10) feet as it is within five (5) feet of the front lot line. The required setback is fifteen (15) feet.

The subject property is Lot P11, Block I, Silver Spring Park Subdivision, located at 800 Silver Spring Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01042738).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner seeks a variance for a 20 x 20 detached carport.
2. The petitioner testified that the house on the property was built prior to 1925 and that the barn was on property when he purchased it. The petitioner testified that construction on the carport was started without a building permit because he was unaware that a permit was required, and also since the carport would replace the existing, dilapidated horse barn.
3. The petitioner testified that his lot and the adjoining Lot 10, are the two shortest lots in the neighborhood and that his lot is the only lot in the neighborhood that has a tiered topography. The petitioner testified that the carport will be built on the footprint of the barn, but that the footprint of the carport will be smaller.
4. The petitioner testified that the property has a large, mature tree located in the center of the rear yard. The petitioner testified that the

tree is 200 feet in height and has a 60 foot canopy. See, Exhibit No. 4 [survey]. The petitioner testified that he spoke with the arborist for the City of Takoma Park and that he was advised that any new construction in the area of the tree would destroy the tree. Under the City of Takoma Park's tree preservation ordinance, the City arborist may prohibit a property owner from building or performing site work of such work that will harm a tree of significant size and maturity.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The detached carport replaces a horse barn located on the property at the same location. The barn has existed on the property since about 1925 and the footprint of the carport will be smaller than the footprint of the barn. The petitioner's lot has a large, mature tree located in the center of the rear yard and a tiered topography.

The Board finds that the operation of the Takoma Park tree ordinance to limit construction on the lot is an exceptional circumstance peculiar to the property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon property owner.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance requested to permit a detached carport is the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the detached carport will continue the residential use of the property and the variance will not impair the

intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the view of the detached carport will not materially impact the view from the surrounding homes and that the variance will not be detrimental to the use and enjoy of the neighboring and adjoining properties.

Accordingly, the requested variance of ten (10) feet from the required fifteen (15) foot front lot line setback to permit an accessory structure/detached carport is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(e).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Wendell M. Holloway, with Donna L. Barron, Angelo M. Caputo and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 23rd day of June, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.